Rights of the Bell Telephone Company as to Use of Streets of Municipalities.

In our answer to clause 2 of Question No. 136, 1902 (March Issue) we stated the law in this regard to be as follows:

"The Bell Telephone Company obtained its original charter under the Federal Act, 43 Vic., chapter 67. Section 92, subsection 10 of the British North America Act, 1867, exempts from provincial jurisdiction, and places within the exclusive legislative authority of the parliament of Canada, "telegraphs, etc., connecting the province with any other or others of the provinces, or extending beyond the limits of the province, and such works as though wholly situate within the province are declared by the parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces." It was held in the case of Regina vs. Mohr (7 Q. L. R., 182, 1881), that under its original charter, the Bell Telephone Company, although authorized to establish telephone lines in the several provinces, in the Dominion, had no power to connect two or more provinces by such lines and (the undertaking not having [then] been declared to be for the general advantage of Canada) that section 4 of the Act, conferring power upon the company to extend its lines across or under highways, etc., was invalid. This company accordingly obtained, in 1882, a further Act (45 Vic., chapter 95), by section 4 of which its works are declared to be for the general advantage of Canada. See also chapter 71, Ontario Statutes, 1882." In a case stated between the city of Toronto and the Bell Telephone Company (reported on pages 95 and 96 of the WORLD for 1902) Mr. Justice Street some time ago handed out a decision to the effect that the Bell Telephone Company had no power or authority to erect their poles or string their wires on and along the highways of a municipality unless the consent of the council had first been obtained to its so doing. The company appealed from this decision to the Court of Appeal for Ontario. On the 14th September last, this court handed out its decision reversing the judgment of Mr. Justice Street. The Provincial Act (chapter 71 of the Ontario Statutes, 1882) passed at the company's request is declared to be invalid. This means that the company has power to erect its poles and string its wires along, across or under any highway or street in any municipality in the province whether its council consents to its so doing or not. The following is the finding of the court, as delivered by Mr. Chief Justice Moss:

"Upon the case stated by the parties two questions arise for decision. The first is whether the work or undertaking for the prosecution of which the defendants were incorporated by the Act, 43 Vic, cap. 67 (Dominion) is one falling within the description of a work or undertaking connecting the province with any any other provinces or extending beyond the limits of the province within the meaning of clause 10 (a) of section 92 of the British North America Act.

"If this question is answered in the affirmative then the work or undertaking falls within the exclusive legislative authority of the Parliament of Canada under clause 29 of section 91 of the Act, and thereupon arises the second question: What, if any, effect has the Ontario Act (45 Victoria, cap. 71) passed by the legislature at the instance of the Bell Telephone Company, upon the rights conferred upon them by the Act of Incorporation and Act 45 Vic., cap. 95 (Dominion). Are their rights in any way curtailed by the provisions of the Ontario Act?

DOMINION ACT.

Power is given the company by the Dominion Act, the judges point out, to build or to purchase lines and operate in any part of Canada, and it is difficult to resist the conclusion that it was intended that the company would extend their operations into more than one province and probably beyond the Dominion. And the conclusion must be that the work or undertaking authorized by section 3 of the defendant's Act of Incorporation, is one falling within clause 10 (a) of section 92 of the B. N. A. Act. The first question must, therefore, be answered in the affirmative.

"It remains to consider the second question," the judgment continues. "The argument for the respondent, the city, is that granting the legislative authority to be in the Parliament of Canada, and not in the Legislature, the defendants having applied for and obtained legislation from the Legislature, must be held to have consented that in any conflict of the enactments those passed by the Legislature should prevail.

"It may well be doubted whether there was any occasion for the Ontario Act. . . . Its preamble shows that its purpose apparently was to allay doubts in regard to those portions of the defendant's work and undertaking which were local and did not extend beyond the limits of this province, and the legislation was sought as a measure of precaution rather than with the purpose or intention of giving up any powers or rights the defendants were entitled to under the Dominion Act.

"Nor is there anything on the face of the legislation to indicate that the defendants had entered into or were making a bargain to that effect. There is nothing there to prevent them from now insisting upon such rights as were given them by the parliament in respect of matters in which it had undoubted authority. Among these were the rights to construct, erect and maintain their line or lines of telephone along the sides of and across or under any public highway or street. These having been granted in furtherance of objects or purposes properly authorized by the parliament, could not be impaired by the action of the provincial legislature.

"Under the circumstances there should be no costs of the litigation to either party."

Consolidation of Municipal Legislation.

At a meeting of delegates from the several county Law Library Associations in this Province held at Osgoode Hall on the 3rd inst, the following resolution was passed:

"Whereas municipal law has to do with so many matters immediately related to the every day life of each citizen, that it should be made as clear and easily understood as possible, and

Whereas incessant, hasty and imperfectly considered amendments to the municipal law, passed often without any apparent reference to principle, but only to correct some particular case of assumed hardship or injustice, has made our municipal law unnecessarily complicated, and

Whereas the municipal Legislation of the Province has been referred to on some occasions by our judges as a "Patchwork of clauses" also as "Complicated, cumberous and contradictory" also as "sometimes illogical and frequently unjust," and

Whereas it has been stated on the floor of the Legislative Assembly for Ontario, that our Municipal Amendments "Are seldom discussed in the House and seldom indeed in the Committee in a thorough or serious way," and that "they are usually passed upon by a few members not always in a judicial but rather in an impatient spirit," and

Whereas the Consolidated Municipal Act of 1903, does not remove these unsatisfactory conditions.

Therefore in the opinion of this meeting, Municipal Legislation of the Province should be all grouped into one well considered Act, or the municipal law of the Province be codified and the grouping of the Legislation or the codification of the law should be done by a draft bill prepared in the interval between the sessions by a committee of the house with the assistance of a number of municipal officers who are accustomed to putting the law in operation.

That copies of this resolution be sent to the Hon., the Attorney General and all members of the Ontario Legislature.—Carried.

The subject matter of this resolution is very important and is well worthy of thoughtful consideration by all who desire the improvement and simplification of municipal legislation. We will be pleased to publish the communications of any subscribers who may be desirous of giving expression to their ideas on the subject.